

**IN THE DAVIDSON COUNTY CHANCERY COURT,
IN NASHVILLE, TENNESSEE**

SENTINEL TRUST COMPANY, and its)	
Directors, Danny N. Bates, Clifton T. Bates,)	
Howard H. Cochran,)	
Bradley S. Lancaster, and Gary L. O'Brien)	
<i>Petitioners</i>)	No. 04-1934-I
)	
)	
v.)	
)	
)	
KEVIN P. LAVENDER, Commissioner)	
Tennessee Department of Financial)	
Institutions)	
)	
<i>Respondent</i>)	

**PETITIONERS' MOTION FOR REHEARING AND MODIFICATION
OF THE COURT'S ORDER OF AUGUST 9, 2004, FOR OTHER RELIEF,
AND FOR EXPEDITED HEARING ON SUCH MOTION**

Petitioners respectfully move the Court (i) to vacate or revise its Memorandum and Order of August 9, 2004, and to modify the same as herein prayed, (ii) to enter final judgment for petitioners upon both the certiorari and supersedeas applications on the basis of the pleadings (including

exhibits and supporting affidavits to the Supplemental Petition for Mandamus—important as proof that there was no basis for seizure and liquidation even if the Commissioner were vested with such powers as to trust companies), by actually applying the law of statutory construction as the only body of law controlling such decision, and (iii) reserving to Petitioners the right to an evidentiary hearing, granting an immediate interlocutory appeal to them in the event the Court shall conclude that the Respondent Commissioner's granted powers to destroy state banks created by T.C.A. §§ 45-2-1502-1504 are vested in him in regard to any type of institution other than banks absent legislation expressly vesting those powers in him over non-banking institutions, as by T.C.A. § 45-1-103(5).

The legal grounds for this motion are:

1st: The aforesaid memorandum conclusively establishes that its conclusion was not guided by the law of statutory construction, because its concentrated on a single sentence and section as contended for by the Attorney-General, contrary to the first rule of statutory construction

2nd: Its rationale took no note of other rules of statutory construction, that (i) all rules of construction must be considered in construing a statute, (ii) ordinary meaning should be given to statutory language, rather than seeking to alter or amend it, (iii) it must be presumed that each word in the statute was used deliberately with each word conveying intent, meaning and purpose, so that the use of particular language in one section but its omission from another must be given its rational effect in determining the statute's effects, and (iv) that no governmental official or entity has any power to control a different such official or entity, and that no governmental official is vested with any powers except as specifically granted by statute.

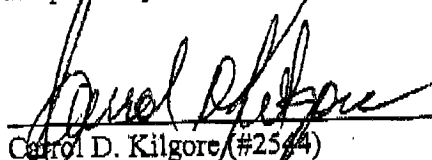
3rd: The Court's rationale disregarded the content of all the statute's relevant provisions both before and after the 1999 amendment in the following particulars: (i) Both before and

after amendment, the Commissioner was vested with defined regulatory powers over trust companies, excluding only pre-1980 trust companies granted such powers in their corporate charters; (ii) both before and after such amendment, T.C.A. §§ 45-2-1002-1006 contained the Tennessee Banking Act's rules on the conduct of trust company business, and the word "bank" definitionally included "trust companies" under T.C.A. § 45-2-1001 for the purposes of those sections and those alone; (iii) both before and after the 1999 amendments, the Commissioners supervising, examining, and liquidating powers were enlarged to empower him to so act with regard only to specified non-banking companies, with "trust companies" not being among the types of companies to which such powers over banks were granted to the Commissioner; (iv) the 1999 amendments, aside from such supervisory powers that may have already been included under T.C.A. §§ 45-2-1002-1006, expressly empowered the Commissioner to exercise his examining powers, but not his liquidating powers, to newly-regulated "trust companies" for the limited period July 1, 1999-July 1, 2002, and (v) the 1999 amendments enacted some added rules governing trust companies in addition to increasing the types of companies (pre-1980 chartered trust companies) subject to the Banking Act, all wholly inconsistent with the basic premise from which the Commissioner draws all his conclusions: That his office alone, without specific grant of powers, grants to him all the powers over non-banking companies subject to the Banking Act as the Act grants him over banks.

4th: In disregarding the law of statutory construction, as the only body of law existing for the guidance of thinking in construing statutes, the Court merely adopted the Attorney-General's desired conclusion as to the meaning of a single statutory section, in support of which conclusion neither the Attorney-General nor the opinion put forth any rationale using statutory construction theory, which—presumably subconsciously—favored the position of the Commissioner and the Attorney-General instead of impartially seeking guidance from the controlling body of law.

This motion merits serious and prompt attention, both upon its merits and in its request for expedited consideration, because, *inter alia*: (i) Absent appellate judicial review, no state officer should be permitted to seize and exercise powers to destroy a legitimate corporation lawfully doing business, unless there be a statute plainly and clearly granting such destructive power to such official; (ii) By their comments in the hearing of August 5, 2004, both the Attorney-General and the Court acknowledged that a continuation of the Commissioner's liquidation activities would destroy Sentinel Trust Company, and in the Court's words, make it impossible to put "Humpty-Dumpty" back together again; (iii) the judicial history of Tennessee proves, through *Boyce v. Williams, Commissioner of Insurance and Banking*, 215 Tenn. 704; 389 S.W.2d 272 (Tenn., 1965), that when a high state official intentionally proceeds to destroy a company without being vested with lawful authority to do so, *certiorari* cannot remedy such destructive action when it does not come before the court which recognizes such lack of authority until after the corporate destruction is complete; and (iv) it is unconscionable for a court of equity to sit by and refuse to grant the simple *status-quo* preservation remedy when the issue of the existence legislatively-granted power is so in doubt that neither the state's attorney seeking to support and implement such destruction, nor the Court, has expressed any statutory construction rationale tending to prove that the exercise of power has any basis other than usurpation.

Respectfully submitted,



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Attorney for Petitioner and Movant

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing motion has been mailed this August 13, 2004, postage prepaid, to the following:

JANET M. KLEINFELTER, ESQ.
Financial Division
Attorney-General of Tennessee
425 Fifth Avenue, North
Nashville, Tennessee 37243.

with **NOTICE:** That the foregoing motion will be presented to the Davidson County Chancery Court, Part I, before the Honorable Walter Kurtz, Circuit Judge, sitting by interchange, at the Davidson County Circuit Judge, Part V, Nashville, Tennessee, at 9:00 a.m. on August 27, 2004, **UNLESS AN EARLIER TIME SHALL BE SPECIALLY SET BY THE COURT AS REQUESTED,**, or as soon thereafter as the parties may be heard, and with **FURTHER NOTICE:**

That if no response is timely filed and served, the Motion is subject to being granted and counsel need not appear in Court at the time and date scheduled for the hearing.


Garrol D. Kilgore